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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 TOOBSHUDUD a.k.a. JACK
11 FIANDER, an enrolled Yakama,

12 Plaintiff,

13 v.

14 JACOBS TOBACCO COMPANY,
15 a cigarette manufacturer,

16 Defendant.

NO.

COMPLAINT IN A CIVIL ACTION

17 **I. INTRODUCTION**

18 1. This is an action for trademark infringement and related claims arising
19 from defendant's use of the name of plaintiff's tribe on cigarette products.

20 3. By their actions, defendant has attempted to capitalize in its business
21 and gain goodwill by confusing customers into believing that the Yakama
22 Nation, of which plaintiff is a member, supports, endorses, manufactures or is
23 otherwise associated with defendant's product. This is particularly important
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25
26

1 because, on information and belief, the product is primarily sold commercially
2 on Indian reservations in New York.
3

4 **II. JURISDICTION AND VENUE**

5 3. This is an action arising under 15 U.S.C. §§ 1114, 1125, New York
6 State General Business Law §349, and common law governing conversion of
7 another's property.
8

9 4. The Court has jurisdiction over this action under 28 U.S.C. § 1331 in
10 that it involves a federal question arising under federal trademark statutes and
11 regulations of the United States Food and Drug Administration.
12

13 5. The Court also has jurisdiction under 28 U.S.C. § 1332 in that plaintiff
14 and defendant are citizens of different states and the amount in controversy
15 exceeds \$70,000.
16

17 6. The Court further has jurisdiction under 28 U.S.C. § 1331 in that this is
18 a civil action that involves a case arising under the Constitution, Laws or
19 Treaties of the United States. In particular, the Yakama Treaty of 1855 which
20 conferred the name Yakama upon each and every member of the tribes and
21 bands signatory to the Treaty.
22
23

24 6.A. The Court has pendant or ancillary jurisdiction over plaintiff's state
25 law claim of an unfair or deceptive trade act or practice prohibited by New York
26 law.

1 7. Venue is proper in that plaintiff resides or is domiciled in this district,
2 the harm caused by the taking of plaintiff's name occurs in this district, the
3 defendant engages in commercial relations with persons within this district and a
4 substantial part of the facts giving rise to this complaint arose in this district.
5

6 **III. PARTIES**

7
8 8. Plaintiff is an enrolled member of the Yakama Nation, a federally
9 recognized Tribal nation situated in the Eastern District of Washington, with an
10 address of 5808A Summitview Avenue, Yakima, WA 98908. Plaintiff is a
11 beneficiary of the Yakama Treaty.
12

13 9. Defendant is a cigarette manufacturer and/or distributor situated in
14 Awkwasasne, New York.
15

16 **IV. FACTS GIVING RISE TO THIS ACTION**

17 10. On June 9, 1855 a treaty was executed between the United States
18 government and fourteen bands and tribes, the names of which are enumerated
19 in the Preamble to such treaty.
20

21 11. The Treaty states as follows:
22

23 Articles of agreement and convention made and concluded at the
24 treaty-ground, Camp Stevens, Walla-Walla Valley, this ninth day of
25 June, in the year one thousand eight hundred and fifty-five, by and
26 between Isaac I. Stevens, governor and superintendent of Indian
affairs for the Territory of Washington, on the part of the United
States, and the undersigned head chiefs, chiefs, headmen, and
delegates of the Yakama, Palouse, Pisquouse, Wenatshapam,

1 Klikatat, Klinquit, Kowwas-say-ee, Li-ay-was, Skin-pah, Wish-
2 ham. Shyiks, Ochechotes, Kah milt-pah, and Se-ap-cat,
3 confederated tribes and bands of Indians, occupying lands
4 hereinafter bounded and described and lying in Washington
5 Territory, *who for the purposes of this treaty are to be considered*
6 *as one nation, under the name of ““Yakama,””* with Kamaiakun as
its head chief, on behalf of and acting for said tribes and bands, and
being duly authorized thereto by them.

7
8 12 Stat. 951 (1859) (emphasis added).

9 12. The Yakama Nation has registered its name in various forms, all of
10 which included the name Yakama, with the United States Trademark and Patent
11 Office on at least 9 occasions, most of which trademarks remain active.

12
13 13. In 1994, by resolution of the Yakama Nation Tribal Council, the
14 official spelling of the word “Yakima” was changed to “Yakama.” The Yakama
15 Nation is the only known Tribe or governmental entity which bears this name,
16 other than enterprises owned by the Tribe such as Yakama Legends Casino and
17 Yakama Nation Land Enterprise.
18
19

20 14. 83 Federal Register 4235 (published January 30, 2018) contains the
21 official listing of all Indian tribal nations recognized by the United States
22 Secretary of Interior. Yakama is part of the official name of the Yakama Nation.
23

24 15. The governing body of the Yakama Nation has never authorized or
25 licensed any other person or entity to use its name.
26

1 16. As demonstrated by Exhibit A attached hereto, on information and
2 belief, defendant manufacturers for retail sale cigarettes which bear the name
3 Yakama. Such cigarettes are sold on tribal reservations in the state of New York
4 and to tribal and nontribal customers within and without Indian Country.
5

6 17. The use of such name is deceptive in that it implies that the products
7 are a product of the Yakama Nation. Yakama is the official name of the
8 Yakama Nation and the use of the tribe's name is likely to deceive consumers to
9 believe it is a product of the Yakama Nation.
10

11 18. On information and belief, neither plaintiff nor similarly situated
12 members of plaintiff's tribe have allowed any person or entity to utilize its
13 name.
14

15 19. The appropriation and use of the name Yakama under the above facts
16 violates 15 U.S.C. § 1114 (1) (a).
17

18 20. Section 1140.16 (a) of the regulations of the U.S. Food and Drug
19 Administration, 21 C.F.R. 1140 *et seq.*, states as follows:
20

21 Restriction on product names. A manufacturer shall not use a trade
22 or brand name of a nontobacco product as the trade or brand name
23 for a cigarette or smokeless tobacco product, except for a tobacco
24 product whose trade or brand name was on both a tobacco product
25 and a nontobacco product that were sold in the United States on
26 January 1, 1995.

1 21. Although the name Yakama has appeared on Yakama tribally
2 manufactured products subsequent to 1994, the brand name was never on a
3 tobacco product.
4

5 Consequently its use by a manufacturer on tobacco products violates
6 federal regulations.
7

8 **V. FIRST CAUSE OF ACTION**

9 Defendant's conduct constitutes Theft or Conversion in that defendant
10 has, without lawful authority, taken or appropriated the name "Yakama" which
11 denotes every member of the Yakama Nation, including Plaintiff, and converted
12 to defendant's use for commercial gain.
13

14 **VI. SECOND CAUSE OF ACTION**

15 Defendant's conduct constitutes Infringement of Registered Trademarks
16 in Violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, as construed
17 under general federal common law.
18

19 Plaintiff, as one of 10,000+ enrolled Yakama co-owners and bearers of
20 the name Yakama have standing to maintain a civil action for the taking of their
21 tribal name and misusing it for commercial gain.
22

23 **VI. THIRD CAUSE OF ACTION**
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1 Defendant's conduct is an unfair and deceptive trade act or process in
2 violation of New York General Law §349 in that it misleads consumers into
3 believing the product is a Yakama product.
4

5 **VIII. RELIEF REQUESTED**
6

7 WHEREFORE, Plaintiff, a Yakama Indian, prays that this Court:

8 1. Restrain and enjoin defendant from manufacturing, advertising or
9 distributing cigarettes or tobacco products bearing the name Yakama.
10

11 2. Destroy all products in defendant's inventory, whether sold or unsold.

12 3. Require defendant to provide an accounting and to disgorge any and all
13 profits.
14

15 4. And enter such other and further relief as is just and equitable.

16 DATED this 14 day of October, 2019.

17 Respectfully submitted,

18 *S/ Jack W. Fiander*
19

20 _____
Toobshudud or dx^w tux^wkwi atkin
JACK W. FIANDER
21 WSBA # 13116
22 Yakama # 4261

23 **CERTIFICATE OF SERVICE**
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1 I hereby certify that on October 14, 2019 I electronically filed the
2 foregoing with the Clerk of the Court using the ECF system which will send
3 notification of such filing to any attorneys of record and the defendants.
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8 /s/ J Fiander
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Exhibit A

